

March 22, 2002

The Honorable Kathy Patterson
Council of the District of Columbia
1350 Pennsylvania Ave. N.W.
Suite 107
Washington, D.C. 20004

Re: Response to Questions Concerning Bill 14-372, "Improved Child Abuse
Investigations Amendment Act of 2001"

Dear Councilmember Patterson:

On March 13, 2002, we received your letter submitting five additional questions and requests for information. As I previously testified, we believe that this legislation is an important part of our efforts to strengthen key elements of the statutes relating to child abuse and neglect. Thank you for the opportunity to provide additional information to Council as it considers these important issues.

1) You requested that we provide a definition for an appropriate subcategory of abuse and neglect cases to which the Multidisciplinary Child Abuse and Neglect Team (MDT) requirement should apply. As you note, we do not support a statutorily mandated MDT at this time. As my testimony reflects, we believe MDTs are useful in cases of sex abuse and serious physical injury, but we prefer that use of MDTs be implemented through modifications to the current Memorandum of Understanding with the Children's Advocacy Center (CAC). However, assuming that some form of MDTs are mandated, we suggest that they would be most appropriate in cases involving allegations of sexual abuse, sexual exploitation, or serious physical abuse, as these are the cases most likely to subject the child victim to repeated interviews. The definitions of sex abuse and exploitation already set forth in the bill are appropriate, we believe. We have looked at definitions of serious physical abuse in other jurisdictions and propose the following: "Serious physical abuse means the fracture of any bone, severe burn, impairment of any organ or other serious injury to a child." Alternatively, if the Council is suggesting mandating use of MDTs, another option would be to enact legislation allowing a core member of the MDT (the Child and Family Services Agency, United States Attorney's Office, the Office of Corporation Counsel or the Metropolitan Police Department) to request an MDT in any case involving sex abuse or exploitation, serious physical abuse, repeated maltreatment (more than 2 reports in a six month period), domestic violence, or substance abuse. Because each of these cases potentially involves criminal conduct, use of the MDT would serve the purpose of limiting a child's exposure to repeated interviews.

2) You noted that the Bill provides that “sustained” complaints of abuse or neglect will never be expunged on the theory that grandparents now may be caring for grandchildren, and that as a result, older complaints may have relevance beyond the current time frames in the law relating to expungement. You have asked for anecdotal information. While I am not able to identify any specific number of cases, it is not uncommon for a parent whose children are being removed to have been in the system when the parent was a child. In one case, for example, the Court was asked by a mother’s attorney to place three children with a grandmother. Although the information had been expunged from the Child Protection Registry, staff remembered the grandmother and it was learned that nine of her children had been removed for neglect. That information was presented to the Court, which then approved an alternative placement recommended by the worker. Had the supervisor not known these facts, however, the placement with the grandmother may have gone forward possible to the children’s detriment. Keeping sustained reports in the Registry without an expungement would provide for a more systemic way to ensure the availability of information for good decision-making.

3) You asked for support of the proposed expansion of D.C. Code §16-2301(9)(E). D.C. Code §16-2301(9) defines a neglected child. Subsection (E) in the definition is designed to protect a child who is in danger of being abused and whose sibling has been abused. Currently, there is no protection for a child living in a home, who may be in danger of being abused, but is not a sibling of the abused child. Recently, the D.C. Court of Appeals narrowly interpreted this section of the Code, holding that the definition of a neglected child, for the purposes of §16-2301(9)(E), does not include a child who is neither the biological nor the adopted brother or sister of the children alleged to be neglected. The case, In Re M.W. and D.W., 756 A.2d 913 (2000), involved two children, M.W. and D.W., who were living in a home with a cousin and their guardians. The cousin died, of what the Medical Examiner called “non natural causes”. The District then sought to define M.W. and D.W. as neglected children for their protection under 16-2301(9)(E). However, the Court of Appeals ruled that they did not fit the statutory definition. As the law is currently written, the District has the jurisdiction to protect a sibling in a similarly situated situation, but does not have the jurisdiction to protect a non-sibling who is living in the same home. The Court concluded by stating, “If that concern is justified, the then District should meet no obstacle in obtaining a statutory clarification.” This amended language protects non-siblings living together. Especially in light of the fact that a large number of children in the District are either living with or raised with non-siblings, this amendment serves to offer greater protection for a large number of children.

4) You have asked us to submit specific language to reflect the District’s request to make available the Child Protection Registry to employers or other organizations working with children who may wish to do Child Protection Registry checks. We would suggest the following new subsection 8 be added to D.C. Official Code §4-1302.03: “(8) chief executive officers or directors of day care centers, schools, or any public or private organizations working directly with children upon the submission of a notarized release signed by the employee or volunteer or prospective employee or volunteer.” We would

anticipate handling this process in a manner consistent with current practice. In addition, we will review the notarized release for legal sufficiency and maintain it in the appropriate file.

5) You asked about two issues in this question. First, whether clarification of the terms “significant presence,” “controlled substance,” and “drug-related activity” is necessary in this Bill. We do not believe the latter two terms need clarification. The phrases “drug related activity” and “controlled substances” are already defined at D.C. Official Code §4-1301.02(8) and D.C. Official Code 48-901.02(4), respectively and we believe the definitions are appropriate. However, neither the D.C. Code nor other jurisdictional codes define significant presence. We prefer that the Code only require a presence of a controlled substance, rather than a significant presence, since any presence of a controlled substance at birth is not normal and thus warrant an investigation.

Second, you asked whether we would support the Bill if it were to require mandatory reporters to report positive drug tests and would in turn authorize CFSA to investigate based on that information, but the drug presence would not, in-and-of-itself, create a presumption of neglect. We fully support this position. Further, we support including “evidence of alcohol abuse”, along side positive drug test as a catalyst for mandatory reporting. Standing alone, we do not think that a positive drug test or evidence of alcohol abuse in a baby constitutes neglect. However, they do constitute warnings, which should be investigated, and if coupled with other information, may substantiate abusive or neglectful behavior.

Thank you for the opportunity to provide this additional information. I hope it is helpful as the Council considers this important piece of legislation.

Sincerely,

Olivia A. Golden, Director
Child and Family Services Agency